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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,261	01/27/2004	Nancy L. Klodt	P06500us00	4141

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DES MOINES, IA 50309-2721

EXAMINER

BUI, LUAN KIM

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	10/766,261	KLODT, NANCY L.	
	Examiner	Art Unit	
	Luan K Bui	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3 and 5-10 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley et al. (6,349,820; hereinafter Kelley'820) in view of Maydwell et al. (5,595,302; hereinafter Maydwell'302) and Walker, Jr. (4,308,951). Kelley'820 discloses an apparatus (10g) for storing and transporting items comprising a top portion (14) having first and second opposite sides and a clip (48, 50) for holding a booklet/paper (44) having a write-on wipe-off surface, a middle portion (20) having first and second opposite sides and connected to the top portion and a bottom portion (12g). The bottom portion having first and second opposite sides and at least two compartments/restraints (Figures 8 and 9). The compartments/restraints of Kelley'820 are capable of holding a drink item and a snack item. Kelley'820 also discloses the other claimed limitations except for the middle portion comprises structures for holding school supplies. Maydwell'302 shows a lunchbox (10) comprising a top portion (14) having first and second opposite sides, a middle portion (170) connected to the top portion and a bottom portion (12) and having structures (180, 184) for holding school supplies such as pencils and eraser (182, 186) and the bottom portion (12) having compartments (42, 48, 80, 90) with restraints (82, 100, 102) for holding meal, drink and others. Walker, Jr. suggests an apparatus comprising a top portion (A) connected to a middle portion (B) and a bottom portion (C). The top portion having first and second opposite sides, the middle portion (B) having first and second opposite sides and

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structures (48) for holding school supplies (45, 50) and the bottom portion (C) having a clip (42, 44) for holding paper (40) (Figure 1). It would have been obvious to one having ordinary skill in the art in view of Maydwell'302 and Walker, Jr. to modify the apparatus of Kelley'820 so the middle portion includes structures for holding school supplies such as pencils for writing on the booklet during use of the apparatus. The apparatus of Kelley'820 is capable of using as a lunchbox for school supplies and meal/snack. Claims 9 and 10 are drawn to the obvious method of using the apparatus of Kelley'820 as modified.

3. Claim 2 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Woodnorth et al. (5,950,834; hereinafter Woodnorth'834). The apparatus of Kelley'820 as modified further fails to show the middle portion being a flap. Woodnorth'834 shows a lunch holder (10) comprising a bottom portion (14), a middle portion (32) is a flap and a top portion (12) is a lid in a closed position. It would have been obvious to one having ordinary skill in the art in view of Woodnorth'834 to modify the apparatus of Kelley'820 as modified so the middle portion is a flap for closing the bottom portion in a closed position for better protecting the items within the bottom portion.

4. Claim 4 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Official Notice. The apparatus of Kelley'820 as modified further fails to show first and second back pack straps being connected to the bottom portion. Official Notice is taken of the old and conventional practice of providing a student's back pack for holding lunch and school supplies for the student having straps for

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carrying the back pack. It would have been obvious to one having ordinary skill in the art in view of Official Notice to modify the apparatus of Kelley'820 as modified so it includes first and second straps attached to the bottom portion to facilitate carrying the apparatus.

Response to Arguments

Applicant's arguments filed on 2/28/2005 have been fully considered but they are not deemed to be persuasive.

Applicant argues that Kelley does not disclose at least one side of the top portion comprising a write-on wipe-off surface in the remarks is noted. This is not persuasive because either surfaces of the top portion 14 of Kelley is capable of performing a write-on wipe-off.

Applicant's arguments with respect to Kelley on pages 7 and 8 of the remarks are noted. They are not persuasive the compartments 40 of Kelley are capable of holding a drink item and a snack item and the compartments are considered equivalent to the restraints as claimed since the drink item and the snack item are not positively recited in the claims. Applicant argues "The problem solved by the invention is always relevant" citing *In re Wright*. This argument is not persuasive because *Wright* has been overruled in the *in banc* *Dillon* decision, *In re Dillon*, appeal no. 88-1245 (Fed. Cir.), decided November 9, 1990. Applicant is further argued that "Kelley is not available under 35 U.S.C. 103 as it is not within the field of the invention's endeavor ..." is noted. This is not understood because claims 1 and 9 only recite an apparatus and method respectively without contents, then what is the invention's endeavor? The Examiner is noted that

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the apparatus of Kelley is not directed for carrying school supplies or lunch, however, the apparatus of Kelley is capable of carrying school supplies or lunch since the claims only recite the apparatus without contents.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb
April 5, 2005

A handwritten signature in dark ink, appearing to read 'Luan K. Bui', with a stylized flourish at the end.

Luan K. Bui
Primary Examiner